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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 7.9.2006.

Municipal Corporation, Ludhiana,
through its Commissioner. .. Appellant.

vs

Anil Kumar Singla ... Respondents.

Coram **Hon'ble Ms. Justice Kiran Anand Lall.**

Present: Mr.Harsh Aggarwal,Advocate,for the appellant.

Kiran Anand Lall, J.

The facts relevant for the disposal of this regular second appeal are that respondent filed a recovery suit against the appellant-Corporation, stating that he is “A” class Contractor, duly registered with the appellant, and the latter allotted to him the construction-work of D&P of main Gurudwara Road on Kakowal Road, in Sant Nagar and Cheema Nagar, Ludhiana, vide work order No.131-3E-III dated 20.3.1997 for an estimated value of Rs.10,39,840/-, after it was sanctioned vide resolution no.899 dated 10.3.1997, and orders in this regard were conveyed to him, by the Executive Engineer, Municipal Corporation, Ludhiana. Later on, however, the appellant got work for a value of Rs.11,18,906/-, executed from him. The final bill prepared, as per the measurement book no.1493, at page 48, was also, for Rs.11,18,906/-. But, the sum released to him was, only Rs.10,39,846/-, and the remaining amount of Rs.79,060/- was withheld. The respondent repeatedly requested the appellant to disburse the remaining amount also but to no effect. He, ultimately, served a notice under Section

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396(1) of the Punjab Municipal Corporation Act, 1976, also, but the balance amount was not paid. Therefore, he had to file the recovery suit.

The appellant contested the suit mainly on the ground that the disputed amount was withheld, as there was no sanction to pay the same. It was further pleaded that entire payment of the work which stood sanctioned, was duly made to the respondent.

Both the courts decreed the suit (with costs), for recovery of Rs.79,060/-, along with interest @9% per annum from the date the amount became due till the date of decree and @ 6% per annum from the date of decree till the date of payment. The appellant, therefore, came up in second appeal, to this court.

The trial court as well as the first appellate court found that though, vide work order dated 20.3.1997, the work initially allotted to the respondent, was for the value of Rs.10,39,840/-, the work actually done by him, at the spot, was for the value of Rs.11,18,906/- and further, that the entire work viz. work for the value of Rs.11,18,906/- had been done, on the instructions of the officials of the appellant-Corporation. This finding was arrived at, on the basis of evidence available on record. PW2 Rakesh Sharma, who is SDO in the appellant-Corporation, admitted that work of the value of Rs.11,18,906/- was executed, at the spot, by the respondent, and the same was entered in the measurement book. He further deposed that Bhagwan Singh, Junior Engineer, had made entries regarding the execution of work, in the measurement book and also recommended the payment of an amount of Rs.11,18,906/-, to the respondent, on 18.4.1998, and this recommendation was countersigned by him (PW2) on 24.4.1998. It was then sent to the XEN incharge for further processing, vide Ex.P3. Besides,

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the respondent also got proved in evidence bill-voucher, attested copy Ex.P4, submitted by Bhagwan Singh, Junior Engineer, in respect of the amount in question. The concerned XEN too appeared as PW4 and testified that the voucher had been countersigned by the then XEN, Shri S.P.Malik. The first appellate court, therefore, rightly held that, *"DW-1 has admitted that all the work executed by the Contractor is entered by the J.E., in his measurement book which is counter signed by S.D.O. and XEN concerned and has proved bills Ex.D-3 and Ex.D-4. Thus, from the evidence adduced by the plaintiff it is proved on record that actual work done by the plaintiff at the spot was for Rs.11,18,906/- while the sanctioned work was for Rs.10,39,806/- and in this manner he has done additional work for Rs.79,060/-. It is also proved on record that the measurement book was entered by the J.E. and counter signed by SDO and XEN. Even from the document Ex.P-3 it is proved that the concerned officials had proposed for revised sanction to be accorded for payment of Rs.79,060/- for the additional work done by the plaintiff at the spot..... If the higher officials of the corporation failed to accord sanction in stipulated period then for the technicality plaintiff cannot be made a scape goat to suffer and on such a mere technicality, the appellant cannot refuse to make payment to the plaintiff when they had already got the work executed from him for such value which was permissible under the Municipal Account Code."*

The concurrent finding of fact of two courts being that the additional work of Rs.79,060/- had also been executed by the respondent, on the instructions of officials of the appellant-corporation, this court cannot go into this question, in regular second appeal.

No substantial question of law, arising in this appeal for

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determination, has been pointed out by the learned counsel, nor any such question, infact, arises in it.

As a result of the above, the appeal is liable to be dismissed, in limine, and it is so ordered.

7.9.2006. (Kiran Anand Lall)
vs. Judge.